

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE**

**RICHARD A CRUMLEY and MERRY)
MICHELLE CRUMLEY,)**

Plaintiffs/Appellants,)

vs.)

CITY OF SMYRNA, TENNESSEE)

Defendant/Appellee,)

and MICHAEL W. TEASLEY,)

_____Defendant.)

Rutherford Circuit No. 32419

Appeal No. 01A01-9607-CV-00316

FILED

January 24, 1997

**Cecil W. Crowson
Appellate Court Clerk**

APPEAL FROM THE CIRCUIT COURT OF RUTHERFORD COUNTY
AT MURFREESBORO, TENNESSEE

THE HONORABLE ROBERT E. CORLEW, III, CHANCELLOR

For the Plaintiffs/Appellants: _____ For the Defendant/Appellee:

Thomas F. Bloom
Nashville, Tennessee

Thomas I. Carlton, Jr.
Dana D. Ballinger
Nashville, Tennessee

AFFIRMED

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

DAVID R. FARMER, J.

OPINION

This action arises under the Governmental Tort Liability Act. While a police officer, Glenn Todd Spearman, was questioning several boys about the possible theft of stereo equipment from automobiles, one of the boys, defendant Michael Teasley, stole the officer's police cruiser. In a fellow officer's vehicle, Officer Spearman followed the stolen police cruiser at speeds in excess of the legal speed limit until the stolen vehicle collided with the vehicle driven by the plaintiff Richard A. Crumley and in which his wife, Merry Michele Crumley, was a passenger. Mrs. Crumley sustained serious injuries in the accident. The Crumleys sought damages against defendant Teasley and the City of Smyrna, alleging that Officer Spearman negligently failed to safeguard his police cruiser and that he negligently pursued the vehicle after it was stolen. After a bench trial, the trial court ruled in favor of the City of Smyrna and against defendant Teasley. The Crumleys now appeal the trial court's decision in favor of the City of Smyrna. We affirm.

Our standard of review of the trial court's decision is *de novo* upon the record, accompanied by a presumption of the correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Rule 13(d), Tennessee Rules of Appellate Procedure. In his Memorandum Opinion, the Honorable Robert E. Corlew, III carefully reviewed the facts and analyzed the applicable case law. We find that the evidence preponderates in favor of the trial court's findings of fact and we find no error of law in its decision. We adopt the portion of the Opinion of the trial court set forth below.

In this cause, the Court has been tasked with responsibility for determining legal and factual issues presented in a suit brought by Plaintiffs under the Governmental Tort Liability Act. The facts surrounding this case are largely undisputed, due at least in part to the fact that the parties were not in close proximity to each other until after all facts related to causation had concluded. The legal issues which the Court must determine surround the standard which a police officer should be required to meet in order to provide for the security of his marked police automobile when he steps from that automobile, leaving the engine running and the keys in the ignition; and further the Court must determine whether the facts presented in the present cause are sufficient to warrant liability due to conduct of a police officer in pursuing or following a stolen, marked police unit.

The facts in this cause began when Glenn Todd Spearman, then a Police Sergeant, and now a Detective, working for the Smyrna, Tennessee, Police Department, was on routine patrol. The date in question was a weekday, and Spearman was patrolling within the vicinity of the Smyrna High School. Knowing that the Police Department had received reports of a number of thefts of stereo equipment from automobiles within the parking lot at the school, Spearman continued to proceed, on routine patrol, into the school parking lot. There, he found two persons under what Spearman considered to be suspicious circumstances. Spearman determined that he had insufficient reason to find probable cause to arrest these individuals, but determined that he had sufficient facts to detain them. (The Smyrna Police Department Standard Operating Procedure Manual was introduced into evidence in part, and suggests that an officer may detain an individual under appropriate circumstances for a maximum of twenty (20) minutes. The Court

considers that the detention contemplated by Spearman was the type of detention originally contemplated by the United States Supreme Court in *Terry v. Ohio*, 392 U.S.1 (1968).) The two individuals were subsequently identified as Michael Teasley and Kevin Desheles. Spearman determined to question the two concerning the reasons for the presence in the school parking lot, and further whether either had a lawful purpose for being about a vehicle which Spearman saw Teasley leaning into, and saw Desheles standing near. Spearman testified that he did not place either party under arrest, although he did read to each party rights guaranteed under *Miranda v. Arizona*, 384 U.S. 436 (1966). Although *Miranda* does not require the reading of rights to a person who is not in custody, and the Smyrna Police Department standard operating procedure concerning brief detention of individuals without placing them under arrest does not require such procedure, Spearman testified that he read the rights to both persons out of an abundance of caution, presumably in order to avoid *Miranda* challenges to statements which either man might subsequently make in the event admissions were made. Spearman then placed Teasley in the rear seat of his police vehicle. Spearman testified, without contradiction, that Teasley was unusually cooperative. Because Teasley was not under arrest, Spearman did not handcuff him. Spearman also testified that the police vehicle was equipped with a "cage," or a plexiglass device which separated the front and rear seats. Within the plexiglass was a sliding 12" x 12" cover, which, when opened, caused a 12" x 12" opening between the front and rear seats. Spearman testified that Teasley had what the Court considers to be a relatively stout build, being approximately 5' 6" in height and approximately 170 pounds in weight. Spearman further testified that he was unaware of any other individual ever to go through the opening in the cage in his police car or any other car in the Smyrna Police Department's fleet.

Spearman testified that he left the engine of his police cruiser running, so that he would be able to respond to emergencies more quickly, should an emergency have arisen while he was questioning the persons in the school parking lot, and also for the reason that the police radio was not operational when the engine was not running. Although Spearman testified that he carried a hand-held radio, he testified that the unit within the patrol car had capabilities that his hand-held unit did not provide. Spearman further testified that he did not close the 12" x 12" opening in the plexiglass cage for the reason that air circulated poorly to the rear seat when the plexiglass opening was shut, although he testified that the car was equipped with equipment which would close and lock the plexiglass cover over the opening.

After closing Teasley in the rear seat of his police automobile, from which Teasley was unable to leave through the rear door, for the reason that the rear doors were not operational from inside the vehicle, and after radioing to the central dispatch for the City his location and status, Spearman testified that he stepped some twenty to thirty feet from his police vehicle to question Desheles. He testified that it was his intention to question Desheles in a location where Teasley could not overhear the conversation, so that Teasley would be unable to conform his answers to those given by Desheles. Upon beginning his questioning of Desheles, Spearman asked Desheles to step from the passenger seat of an automobile which Spearman later learned was the vehicle in which Teasley and Desheles drove to the school parking lot. Upon assisting Desheles from the vehicle, Spearman noted stereo equipment lying on the rear seat of the vehicle with wires exposed. At approximately the point when Spearman began talking with Desheles outside the vehicle, a "back-up" police vehicle driven by Smyrna Police Officer George Allen Johnson arrived at the scene. Spearman continued to question Desheles, and at approximately the point when Desheles acknowledged that he and Teasley were in the process of stealing stereo equipment from automobiles in the school parking lot, Spearman heard his own police cruiser accelerate and saw it speed away, apparently driven by Teasley. Spearman ceased his questioning of Desheles, and ran to Johnson's police vehicle in order to chase his own stolen police cruiser. (Johnson then apprehended Desheles, who took advantage of the opportunity to run from the scene. Desheles was then placed under arrest.) Spearman testified that he was aware that his police vehicle had

made a right turn upon exiting the school parking lot, and he proceeded to travel on Nissan Boulevard from the school parking lot in the direction of Interstate 24, without having sight of his vehicle. Subsequently, however, traveling at speeds double the lawful speed limit, Spearman testified that he was able to again gain visual contact with his vehicle. He testified that traffic on Nissan Boulevard was extremely light, and he felt his speed posed no danger to any vehicle. Spearman then traveled on Interstate 24, in an effort, he testified, to maintain visual contact with his police cruiser. He testified that he traveled at speeds of up to seventy-five miles per hour, although his own police cruiser, then driven by Teasley, traveled at speeds which Spearman estimated to reach as high as ninety miles per hour, although it was Spearman's testimony that Teasley frequently had to slow down because of other traffic on the interstate which was moderate. Spearman testified that when Teasley had to slow for traffic he would be able to gain distance on the vehicle, but it was his testimony that he remained at least three-fourths of a mile to a mile behind his own cruiser at all times. Teasley then proceeded some few miles on the interstate, in a northwesterly direction, until he neared the interchange at Waldron Road, very near the LaVergne City limits. Spearman testified that he had begun to cease his following of the cruiser for the reason that he had radioed for assistance from LaVergne and Metropolitan Nashville, for the reason that the stolen police cruiser was nearing the city limits of those municipalities.

Plaintiffs Richard A. Crumley and wife, Merry Michele Crumley, were simultaneously driving on Interstate 24 in their 1986 Ford Aerostar van. The Plaintiffs were bound for Vanderbilt University Medical Center for the reason that their small child, who was born with multiple physical problems, had an appointment with doctors and medical professionals. The Plaintiffs had driven from their home in Cumming, Georgia, and spent the preceding night in Murfreesboro. They were, then, travelling in the same direction as the stolen police vehicle and the police vehicle then driven by Sergeant Spearman. Plaintiff Richard Crumley testified that he saw what he later learned was the stolen police vehicle approaching behind him in his lane of traffic, at a high rate of speed. He testified that he was travelling at a rate of seventy miles per hour, with the flow of traffic, in the left lane of the interstate, and saw the stolen police vehicle move to the right, as though to pass him in the right lane of traffic, then "nose down" as if the brakes had been applied sharply on the vehicle. The Plaintiff then testified that the stolen vehicle apparently went out of control, and that the side of the vehicle struck the rear of his van. The evidence shows that the contact between the Plaintiffs' vehicle and the stolen police vehicle resulted in repairs of \$784.82 to the Plaintiffs' van, including new parts, and resulted in some very minor bending of the rear bumper of the police vehicle, which was not repaired. The police vehicle, continuing to be driven by Teasley, then proceeded across the median dividing the lanes of travel on the interstate highway, after striking the Plaintiff's van, and then crossed the oncoming traffic lanes without incident, ultimately coming to rest on the southwest side of the interstate highway. Teasley abandoned the vehicle at that point, and ran across a parking lot, up an embankment, and was not apprehended for more than one year.

Sergeant Spearman testified that at the time he saw his police cruiser begin to cross the interstate median, he was approximately three-quarters of a mile behind the vehicle trailing on the interstate. Plaintiff Richard Crumley testified, however, that it was his memory that the police vehicle driven by Spearman was only some five seconds behind the stolen vehicle. (In attempting to reconcile the testimonies of the parties, the Court has computed that a motor vehicle driven at a speed of seventy-five miles per hour as Spearman testified he was driving, would travel only some 550 feet in five seconds, or one-tenth of a mile, rather than three-quarters of a mile, or nearly 4,000 feet, as the officer testified.)

Despite the relatively slight impact between the stolen police cruiser and the van owned by

the Plaintiffs, Plaintiff Merry Michele Crumley sustained extensive injuries, she alleges, with medical bills totalling in excess of \$60,000, and resulting in permanent impairment. It is stipulated that prior to this accident the Plaintiff had suffered a work-related injury, which had left her with restrictions, and some permanent impairment, and it is the Plaintiff's theory that her prior injury caused her back to be more susceptible to injuries in the present accident. Neither Plaintiff Richard Crumley nor the minor child of the parties suffered injuries.

The Court must then determine first whether the actions of Sergeant Spearman, either in failing properly to secure his police cruiser initially, or in following that cruiser, constitute negligence sufficient to hold the City of Smyrna liable under the Governmental Tort Liability Act. The provisions of that Act provide in pertinent part:

The court, before holding a governmental entity liable for damages, must first determine that the employee's or employees' act or acts were negligent and the proximate cause of plaintiff's injury, that the employee or employees acted within the scope of their employment and that none of the exceptions ... are applicable to the facts

Tennessee Code Annotated §29-20-310 (1995 Supp.). Certainly under the facts of the present case, this statute places a severe burden upon the Plaintiffs. First, in the consideration of the proximate cause of the Plaintiff's injuries, it is clear that the injuries suffered by the Plaintiff were proximately caused by the actions of Defendant Michael Teasley, in that he drove a motor vehicle in a negligent manner, causing a collision between the vehicle which he was operating and the vehicle in which Plaintiff Merry Michele Crumley was riding. The term "proximate cause" is not defined within the Governmental Tort Liability Act, *Tennessee Code Annotated* §29-20-101, *et seq.* (1995 Supp.), and therefore the Court must rely upon the definitions of the term otherwise provided in the law. Proximate cause has been defined to be "a cause which in natural and continued sequence produces the injury and without which the injury would not have occurred." *Alessio v. Crook*, 663 S.W.2d 770, 776 (Tenn. Ct. App. 1982) *perm. app. denied*. The Supreme Court has more narrowly defined proximate cause, however, as "that act or omission which immediately causes or fails to prevent the injury; an act or omission occurring or concurring with another which, if it had not happened, the injury would not have been inflicted." *Wharton Transport Corp. v. Bridges*, 606 S.W.2d 521, 525 (Tenn. 1980); *Tennessee Trailways, Inc. v. Ervin*, 438 S.W.2d 733, 735 (Tenn. 1969). Certainly it is difficult to dispute that the immediate triggering event which resulted in the Plaintiff's injuries was not the action of the police officer, but instead the action of the thief who stole the police vehicle. It has been held, however, in some circumstances, that more than one act may constitute a proximate cause, or that there may be two proximate causes of an injury, occasioned by two separate individuals. *Benson v. Tennessee Valley Electric Co-op*, 868 S.W.2d 630, 643 (Tenn. Ct. App. 1993) *perm. app. denied*. As the trier of fact, the Court in this cause finds that the circumstances are sufficient to show that there may have been more than a single proximate cause of the Plaintiff's injuries.

Thus the Court must next consider whether the actions of Sergeant Spearman constituted negligence. The standard of care which a party must follow is a question of law to be decided "based on evidence and mixed considerations of logic, common sense, and public policy." *Allen v. Baggett*, 905 S.W.2d 190, 191 (Tenn. Ct. App. 1995) *perm. app. denied*. The scope of the duty or standard of care is a question of fact, *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 428 (Tenn. 1994); *Allen v. Baggett*, *supra* at 191; *Martin v. Barge, Waggoner, Sumner & Cannon*, 894 S.W.2d 750, 751 (Tenn. Ct. App. 1994) *perm. app. denied* (1995). Indeed, the issue of proximate cause likewise is a question of fact. *McGee v. Nashville White Trucks, Inc.*, 633 S.W.2d 311, 317 (Tenn. Ct. App. 1981) *perm. app. denied* (1982).

Both parties acknowledge that Tennessee law concerning liability of an owner

of a motor vehicle for the actions of another who steals that vehicle were changed by the decision of the Tennessee Supreme Court in *McClenahan v. Cooley*, 806 S.W.2d 767 (Tenn. 1991). Prior to that decision, Tennessee had held that an owner of an automobile was not liable even when he left the engine of his automobile running, and the keys in the ignition, if the vehicle was parked on private property. *E.g.*, *Parker v. Charlie Kittle Pontiac Company*, 495 S.W.2d 810 (Tenn. 1973); *Teague v. Pritchard*, 279 S.W.2d 706 (Tenn. 1954); *Rowe v. City of Chattanooga*, 666 S.W.2d 469 (Tenn. Ct. App. 1983) *cert. denied* (1984).

Recognizing that the law allows an injured person to recover from the owner of a motor vehicle for actions of a car thief when the owner does not properly safeguard his motor vehicle, the Court must consider the circumstances surrounding the theft of the police car in the present cause. None of the prior decisions in Tennessee are of assistance to the Court in considering the facts. In *McClenhan* [sic], *supra*, the Court simply established that the claim of a Plaintiff for injuries against a negligent owner of a stolen vehicle states a cause of action. In that cause, the Trial Court, following the vast body of prior Tennessee law, had granted the Defendant's Motion to Dismiss, and the Court of Appeals affirmed that decision. *McClenhan* [sic] *v. Cooley*, [unpublished] 1990 W.L. 74395, Court of Appeals No. 145 (Tenn. Ct. App., June 7, 1990, *perm. app. granted*). In reversing the decisions of the lower courts, the Tennessee Supreme Court only found that summary judgment should be denied and that a jury question is presented in cases such as the one at bar. The Supreme Court did not determine whether *McClenhan* [sic] was entitled to damages. *McClenhan* [sic] *v. Cooley*, 806 S.W.2d 767, 776 (Tenn. 1991).

The Court has herein set forth the facts surrounding the theft of the automobile in this cause. The evidence is undisputed that Sergeant Spearman was some twenty to thirty feet away from his automobile when it was stolen. He left the engine running, with the keys in the ignition, in a parking lot where he knew petty thefts had previously occurred, but no one else was in the parking lot other than another police officer, Desheles, with whom Spearman was speaking, and whose person Spearman was detaining, and Teasley. Spearman had placed Teasley in the rear seat of his automobile, which he had contemplated to be a secure location for Teasley to be held during a temporary detention. Spearman had not contemplated that Teasley would crawl through the small opening, considering his relatively large size, and particularly given the mannerisms which Teasley had previously demonstrated. The Court cannot find that he was unreasonable in his thought that Teasley was secured away from the control of the motor vehicle. Spearman had never previously known of any prisoner to escape through the small opening in the plexiglass cage. He had turned his back to his vehicle, the evidence shows, but again, the Court cannot find such actions to be unreasonable. The Court therefore finds that Sergeant Spearman was not negligent in his precautions at the scene where his vehicle was stolen. Given the precautions that Spearman took, the theft of his vehicle was not foreseeable.

It remains, then, whether by virtue of his following of the stolen police car, Spearman was negligent. Spearman was adamant that he was attempting only to maintain visual contact with the vehicle, and not to overtake it. Such may seem a subtle difference, yet he insists that he was not attempting pursuit as that term is defined in the Smyrna City Police Standard Operating Procedures. *Webster's Dictionary* defines pursuit as "the act of pursuing," and defines "pursue" to mean "to follow in order to overtake, capture, kill, or defeat," or "to proceed along ... to follow up." *Webster's Ninth New Collegiate Dictionary*, 1989, page 957.

In order to hold a governmental entity liable for the actions of a police officer in commencing a high pursuit, or continuing pursuit, it must be shown that the officer's decision was unreasonable. *Haynes v. Hamilton County*, 883 S.W.2d 606, 607 (Tenn. 1994). In *Haynes*, the Court determined that the actions of a police officer in commencing or continuing a high speed chase which resulted in the death

of three persons was unreasonable. In that case, the Sheriff's officer began to pursue a vehicle, intending to stop it only for the reason that the vehicle had no tail lights. In that case, the police officer was in "hot pursuit" travelling on surface roads rather than on a limited access highway. The speeds travelled in the *Haynes* case reached at least 100 miles per hour. The vehicles were travelling, apparently, on an undivided street, such that only the center line separated traffic going in opposite directions. That high speed chase concluded when the driver of the vehicle being chased crossed the center line dividing his lane of travel from oncoming traffic, running head-on into another vehicle. Although it was later determined that the officer in *Haynes* was pursuing a stolen vehicle, the officer was unaware at the time of the chase that the vehicle was stolen. *Id.* at 608. Certainly there are factual distinctions which must be made, which distinguish the case at bar from *Haynes, supra*. In the case at bar, the evidence shows that the "chase" (which Spearman denies occurred) occurred on a limited access, four lane highway, where the speed limit was either 55 or 65 miles per hour. (Spearman testified the speed limit was 65, but in answer to the Court's question, he acknowledged that the speed limit is currently 65, and he was unaware of the speed limit at the time of the incident in question.) The evidence shows that at times the "chased" vehicle travelled at speeds of 90 miles per hour but that the "chasing" vehicle never exceeded 75 miles per hour. The evidence also shows that traffic was "moderate" according to Sergeant Spearman, but "heavy" according to Plaintiff Richard Crumley. Crumley testified that he was travelling at approximately 70 miles per hour, and that he was travelling with the flow of traffic. Spearman also addressed the fact that within his stolen patrol car was an easily accessible fully loaded shotgun.

Given the circumstances presented by the evidence, this Court does not find that the officer was negligent in beginning or continuing the "chase" in question. Even assuming the facts in a light most favorable to the Plaintiff, the evidence shows that the officer was some 550 feet behind the pursued vehicle. According to the testimony of the Plaintiffs and their witness, both police vehicles were travelling with their emergency blue lights engaged. (Spearman testified his blue lights were on, but that Teasley had not engaged the blue lights on the "chased" vehicle.) Certainly a vehicle travelling at 90 miles an hour, even on a limited access highway where other traffic is proceeding at 70 miles per hour creates an unsafe condition. This is true, even when the vehicle travelling 90 miles per hour is a marked police patrol unit, with emergency equipment activated. Where that vehicle, however, is in the hands of a thief, and the thief is fleeing custody of police, with access to the police radios and a loaded shotgun, the actions of the officer in pursuing that vehicle as Spearman did in the case at bar appear reasonable.

The officer in the present case certainly had a difficult decision to make. Perhaps he knew or should have known the dangers that can occur simply from a marked police unit being in the hands of one who is prone to crime. *See, State v. Hartman, 703 S.W.2d 106, 110-113 (Tenn. 1985)*. Police radios in the hands of a criminal allow the criminal to hear what is being transmitted on the law enforcement nets, and even to transmit messages with the potential of creating confusion or otherwise hampering police operations. Certainly a loaded shotgun in the wrong hands has tremendous potential for danger to others. Thus, a chase of a stolen police vehicle must be considered by a different standard than the chase of an ordinary motor vehicle, even a stolen car. The Court cannot find that the officer exercised poor judgment, or that he was negligent in beginning or continuing the chase. Particularly by pursuing the stolen police vehicle in the manner which he did, it appears that the officer exercised appropriate judgment.

The decision of the trial court is affirmed. Costs are taxed to the Appellants, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P. J., W.S.

DAVID R. FARMER, J.